December 17, 2004

Ms. Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

RE: Boston Edison Company and Commonwealth Electric Company, d/b/a NSTAR Electric, D.T.E. 04-70 (Securitization)

Dear Secretary Cottrell:

Pursuant to the procedural schedule adopted in this proceeding, the Attorney General submits this letter as his response to the Initial Brief filed by Boston Edison Company ("Boston Edison") and Commonwealth Electric Company, d/b/a NSTAR Electric, (the "Company") on December 10, 2004.[1]

Once the Department issues a Financing Order, the Order and "the reimbursable transition cost amounts shall be irrevocable and the [D]epartment shall not have the authority... to revalue or revise for ratemaking purposes the transition cost, determine that the reimbursable transition cost amounts or transition charges are unjust and unreasonable, or in any way reduce or impair the value of the transition property..." G.L. c. 164, § 1H (b)(3); *see* Company's Initial Brief, p. 7. These irrevocable transition cost amounts and the rights to the transition property are set forth in the Company's Issuance Advice Letter, which the Company files after the Department issues a Finance Order. Company's Initial Brief, p. 11. In a record request, the Attorney General asked the Company to include in the proposed Finance Order a term that allows for the immediate correction of any miscalculations in the Issuance Advice Letter and any adjustments to customers' rates. Tr. 1, pp. 45-46. In its response, the Company only agreed that it would promptly correct subsequent True-Up Advice Letters, not the Issuance Advice Letter. RR-AG-2. If the Department does not include in its Finance Order a term that allows for the

[1] Silence by the Attorney General in regard to any arguments in the Company's brief should not be interpreted as assent. The Attorney General reserves his right to respond to any Company Reply Brief. G.L. c. 30A § 11(1).

immediate correction of any miscalculations in the Issuance Advice Letter, there will be no remedy for customers if errors occur.[2] The Department should include a requirement in its Financing Order that the Company correct any miscalculations to the Issuance Advice Letter.

The Department should order the Company to use one discount rate for all of the customer savings analyses in the securitization transaction Issuance Advice Letters. Company's Initial Brief, p. 11. Although the customers' discount rate is difficult to estimate, it should not vary across companies and across transactions, as the Company has proposed. Here, the Company uses three different discount rates in its analyses of customers savings for these transactions, depending on which witness is doing the analysis and whether the analysis is for Boston Edison or Commonwealth.[3] With the merger of these companies, the Company should not use different discount rates for their customers, depending on what town they live in and which label is on the transaction being analyzed.

The average customer's marginal cost of capital and discount rate is higher than that of a large utility like NSTAR and, therefore, the Department should order the Company to use a uniform discount rate that is greater than that of NSTAR. The Company's witness, Mr. Hevert, used NSTAR's marginal cost of capital of 7.82 percent as the discount rate in his analysis. *See MASSPOWER*, D.T.E. 04-61, Exh. NSTAR-RBH-6 (Confidential), p. 1, n. 1, and *Dartmouth*, D.T.E. 04-78, Exh. NSTAR-RBH-6 (Confidential), p. 1, n. 1. The Company also used an 8.20 percent discount rate for certain analyses. *Id*., Exh. NSTAR-COM-GOL-2 and Exh. NSTAR-COM-GOL-2, respectively. Use of this discount rate would provide a minimal 58 basis point premium over the Company's marginal cost of capital to reflect the customers' higher required discount rate. Therefore, the Department should order the Company to use an 8.20 percent discount rate in all of the customers savings analyses that it performs for the Issuance Advice Letters.

The Company claims that it has established an order of preference so that transition costs having the greatest impact on customer rates will be the first to be reduced by the securitization. Company's Initial Brief, p. 11. Commonwealth indicates, however, that it intends to use the proceeds remaining after making any purchased power contract termination payments to pay down only long-term debt, thus increasing Commonwealth's overall weighted cost of capital. Tr. 2, p. 206. Commonwealth could and should reduce its capitalization in a manner that decreases

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[2] For example, in a similar case in Texas, the Commission included in its Financing Order a three day period for it to review the arithmetic accuracy of the calculations in the Company's Issuance Advice Letter and issue an order finding that the proposed issuance is not accurate, if necessary. AG-1-6, p. 290 (TXU Electric Company, Docket No. 25230).

[3] The Company uses a discount rate of 6.61 percent for Boston Edison's customer savings analysis, 8.20 percent for Commonwealth's customer savings analysis, and 7.82 percent for both companies' above market cost analysis. *See MASSPOWER*, D.T.E 04-61 and *Dartmouth*, D.T.E. 04-78.

its overall weighted cost of capital for customers by reducing both its debt **and** its equity, and so reduce the total cost to customers. In a similar case in Texas, the Commission, in its Financing Order, required the Company to apply the proceeds from the securitization to retiring the Company's debt or equity, or both, with the goal of maintaining a balanced capital structure. AG-1-6, p. 280 (TXU Electric Company, Docket No. 25230). Similarly, in this case, the Department should order the Company to reduce its capital structure to decrease its overall weighted cost of capital.

The Department should

(1) reject inclusion of the Dartmouth buyout payment in the amount to be securitized;

(2) reject inclusion of the unrecovered deferred transition charge in the amount to be securitized;

(3) reject inclusion of the mitigation incentive payments in the amount to be securitized;

(4) reject inclusion of the transaction costs that have not yet been invoiced and have not been shown to be known, measurable and prudent in the amount to be securitized;

(5) approve inclusion of unrecovered fixed component transition charges in the amount to be securitized;

(6) require the Company to match the maturity length of the bonds to the life of the underlying transition cost;

(7) require the Company to file with the Issuance Advice Letter the underlying Treasury debt instrument rates, interest rate spreads, and other data used to determine the coupon rates on the proposed bonds;

(8) require the Company to make corrections to any errors in the Issuance Advice Letter and associated attachments and immediately reflect those changes in the transition charge calculations; and

(9) require the Company to reduce Commonwealth's overall weighted cost of capital to customers with any funds remaining after payments for the contract termination buy down and transaction costs.

Sincerely,

Colleen McConnell
Assistant Attorney General

cc: Service List